

**MINUTES OF THE CITY PLANNING COMISSION  
J. MARTIN GRIESEL ROOM**

September 10, 2004

9:00 A.M.

**PRESENT**     *Appointed Members:*

Don Mooney, Jim Tarbell, Terry Hankner, and Valerie Lemmie

*Community Development and Planning Staff:*

Margaret Wuerstle, Jennifer Walke, Felix Bere, and William Forwood

*Law Department:*

Dotty Carman and Julia Carney

*Buildings and Inspections:*

Reggie Lyons

**CALL TO ORDER**

Mr. Mooney called the meeting to order.

**MINUTES**

The minutes of the July 30<sup>th</sup> meeting that were approved at the August 27<sup>th</sup> meeting were rescinded.

**MOTION:**     Ms. Hankner -- moved approval

**SECOND:**     Mr. Mooney – second

**VOTE:**        Approval – all ayes (4-0) motion carried

The revised minutes for the July 30<sup>th</sup> meeting were presented.

**MOTION:**     Ms. Hankner -- moved approval

**SECOND:**     Mr. Mooney – second

**VOTE:**        Approval – all ayes (4-0) motion carried

The minutes of the August 27<sup>th</sup>, 2004 meeting were presented.

**MOTION:**     Ms. Hankner – moved approval

**SECOND:**     Mr. Mooney – second

**VOTE:**        Approval – all ayes (4-0) motion carried

**CONSENT ITEMS**

**ITEM #1** – Request for Staff to re-study zone changes made during re-write process at 3475 West 8<sup>th</sup> Street in East Price Hill

**ITEM #2** – Request for Staff to re-study zoning changes made during re-write process at 5848 Winton Ridge Lane in Winton Hills

**Motion:**        Ms. Hankner moved approval of both Consent Items

**Second:**       Ms. Lemmie

**Vote:**          All ayes (4-0), motion carried.

## **DISCUSSION ITEMS**

**ITEM #3** – A Report and Recommendation on a Zone Change for properties on Montgomery Road between Coleridge Avenue on the north to Tyne Avenue on the south within Interim Development Control District No. 57, Kennedy Heights-Montgomery Commercial Corridor.

Felix Bere (Staff Planner) presented the zone changes and requested approval from a CC-A District to a CC-P District and gave a brief history on the Interim Development Control District #57. DCDP staff worked with the community to produce a Community Plan. Zone changes were being proposed in this plan. Therefore, an IDC was placed on the property. On April 5, 2004 a staff conference was held. All that attended this conference agreed with changing the zone change from CC-A to CC-P. The Community Plan proposed changes to the subject block that would make it more pedestrian friendly instead of auto-oriented. The community would like to see new buildings built to the sidewalk with parking in the back of the buildings. The CC-P zoning district would allow this to happen and preclude drive-thrus.

Mr. Mooney stressed that no comments were received, nor statements given, nor people present that were in opposition of this proposal. Mr. Mooney called for a motion.

**Motion:** Ms. Lemmie moved approval  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

Ms. Lemmie asked if the Department of Buildings and Inspections needed to be notified so that permits are not issued while the Zone Change is pending before the City Council.

Mr. Mooney asked if it would be necessary to extend the IDC.

Ms. Carman (Law Department) noted that we had already had an emergency extension on the IDC once.

Ms. Lemmie suggested that Margaret Wuerstle make sure that Buildings & Inspections is notified that no permits are issued while this matter is pending with City Council.

**ITEM #4** – Emergency Ordinance – Repealing Chapter 741, Historic Conservation.

This item was taken off the agenda. It must first be referred to the Planning Commission by City Council. It will be presented to the Planning Commission once it has been referred by City Council.

A packet on the Urban Renewal Plan for University Village was given to the Commission at this meeting. Distribution at this time would allow the Commission extra time to review the information before the September 17<sup>th</sup> meeting.

**ITEM #5** – Zoning Code Text Changes

Location of Proposed Changes: Citywide

Two proposed changes were pulled from the agenda: **§1400-20** Permits Issued in Conflict, and **§1431-01** Interim Development Control District (IDC).

Mr. Mooney had requested that Chief Planner Margaret Wuerstle divide the proposed amendments into those that were minor corrections and typographical errors and those changes that were more substantial and may require more discussion.

The following Sections of the Zoning Code were discussed for proposed changes:

#### **§ 1401-01-C17 Contractor’s Storage – Definition**

Ms. Wuerstle proposed that the word ‘landscaping’ be included in the regulations so that landscaping contractors would be covered by this regulation. The law department had no objection to this change.

**Motion:** Ms. Hankner moved approval to add “ landscaping” to the regulation as proposed in the staff report.  
**Second:** Ms. Lemmie  
**Vote:** All ayes (4-0), motion carried.

#### **§ 1403-07 Development Regulations – Single Family Districts**

Ms. Wuerstle proposed that three typographical errors under the Driveways and Parking Section in the text be corrected. The Location of Parking Section 1425-17 should be 1425-15, next Landscaping 1425-31 should be 1425-29 and Lot Screening should be 1425-27.

**Motion:** Ms. Lemmie moved approval  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

#### **§ 1405-05 Use Regulations – Residential Multi-Family Districts**

Ms. Wuerstle proposed the limitations for food markets be changed. Limitation (L7) states that: Commercial Uses are Permitted on the Ground Floor Occupying Less than 2,500 sq. ft. and larger commercial uses require conditional use approval. Staff has been questioned about existing single-family duplexes and triplexes turning a room in one of the units into a commercial use. The intent of staff on this item was for large buildings (high rises) to allow some type of convenient/commercial use. The re-write did not foresee converting one room of one unit to a commercial use in a 3-4 unit building. The language Ms. Wuerstle proposed would limit commercial uses larger complexes by limiting commercial uses to complexes of 100 units or more.

Reggie Lyons explained that recently he had received inquiries regarding turning one room in a four-unit structure into a convenience store. This opens up the door for these convenience stores to sell alcohol.

Mr. Mooney requested clarification on what zoning districts would be allowed to have commercial components. He felt that staffs concern about commercial uses in a small building was over-reacting. He felt that it was the intent of the Commission and staff to allow mixes of residential and commercial uses. He also felt that the intent was to allow some smaller complexes to be allowed to have commercial uses. Ms. Lemmie was concerned about the potential for the sale of beer or wine and illegal activity if commercial uses were allowed to occur in one of the units in smaller structures.

Ms. Wuerstle pointed out that as proposed, developers could request a conditional use for buildings with less than 100 units. Smaller structures or complexes with 50 –75 units would not be precluded from having commercial/convenient uses. However, it would require a conditional use and therefore a public hearing to ensure that the commercial component was compatible with the surrounding neighborhood.

Julie Carney (Law) proposed besides having the phrase “ground floor” perhaps we could put in “exterior entrance only”.

Mr. Ubelacker, Hyde Park property owner, pointed out that this was just the camels nose under the tent for owners of 1, 2 or 3 unit structures to allow one room stores in inappropriate locations. Staffs recommendation as proposed, is to close the door to these unintended consequences.

Mr. Mooney would like to table this item for more consideration by Planning and the Law Department. He did not want to limit the commercial component to just high-rises but would like to ensure that unintended negative consequences were addressed.

Ms. Wuerstle 1409-27 – Outdoor Facilities and Storage Areas.

Nowhere in the regulation is the term “outdoor facilities” used although it is in the title. There is some confusion as to what exactly the term “ outdoor facilities” is referring to. Steve Briggs, Staff Planner who worked on this language, felt there was a need for more coverage and flexibility than the term “storage areas” would provide. For instance, a display area for hot tubs, or gas pumps subordinate to a maintenance facility use would not be considered storage but should be screened. The Law Department wanted a definition of “outdoor facility” in the code if the term was added to the regulation. Mr. Mooney suggested eliminating the words from the title. Ms. Lemmie wanted to know if the elimination of these words would handle the concerns of staff. Ms. Wuerstle said it might bring up arguments of what was storage and what was outdoor sales. Extra protection would require leaving the words in and then defining the term as the Law Department suggested.

Mr. Reggie Lyons of Buildings & Inspections suggested just using “outdoor storage” and taking out the term “outdoor facility”. Dotty Carman of Law agreed with this plan.

Ms. Lemmie made a motion to eliminate the words “outdoor facility” from the title and leave the language in the text as originally proposed. She suggested that staff monitor the effects of this change during the next 6-12 months.

**Motion:** Mr. Lemmie approval  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

#### **1421-01 Accessory Residential Structures –**

Ms. Wuerstle said the only issue is the word “etcetera”. It provided too much flexibility and we should limit what items can be put in front yards. It was also noted that the Zoning Code’s definition of structure allows us only to regulate structures that are permanently attached.

Mr. Mooney felt the words “ other similar uses” would be the meaning of etcetera. Ms. Hankner preferred instead of “etcetera” use of the words “and other similar uses”.

Mr. Lyon pointed out that the code indicates that we are focusing on uses “other than” these listed and this double negative creates confusion to the public. He suggested that the the code be revised to say “these items are permitted in the front yard”.

Mr. Ubelacker inquired about fencing required around a fishpond for the safety of children. The section of the building code that regulates pools should apply to something like fish ponds. Ms. Lemmie asked that the staff look into this since the item is being tabled.

Mr. Mooney suggested tabling this item to allow staff to develop appropriate language that would eliminateould eliminate the double negative.

#### **§ 1425-19 Off -Street Parking and Loading Requirements- Modification**

Ms. Wuerstle proposed that the Commission approve changes as requested in a motion by Council. The changes proposed would not change the regulation but would just make this section easier for staff and the public to find and understand.

Mr. Uebelacker mentioned that the code exempts the first 2,000 sq. ft. floor area from off-street parking requirements. Mr. Uebelacker pointed out that, as written, the regulation does not require the floor area to be surrounded by a permanent wall. Developers will put up curtain walls to circumvent the regulation. The regulations need to include a statement that would require using a permanent or exterior wall so that a 20,000 square foot building wouldn't be able to circumvent the regulation and not provide parking. Mr. Uebelacker asked that this issue be addressed.

Reggie Lyons explained that it would be too difficult to regulate interior curtain walls through the Zoning Code.

Motion on approval as written:

**Motion:** Ms. Lemmie moved approval for the change as proposed by the staff report.  
**Second:** Ms. Hankner  
**Vote:** All Ayes (4-1), motion carried.

### **§1425-33 Additional Parking Lot Standards – Wheel Stops**

Margaret Wuerstle proposed that the word “curb” be removed based upon City Council’s Ordinance that approved this change.

**Motion:** Ms. Lemmie  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

At this time Gerri Krause of North Avondale stated that she would like to discuss the definition of Public Nuisance before Ms. Lemmie had to leave meeting and the Commission lost their quorum.

### **§ 1401-01 Public Nuisance**

Dotty Carmen stated there were several definitions of ‘public nuisance’ in the Municipal Code.

Margaret Wuerstle explained that the term “public nuisance” is used throughout the Municipal Code but there was no definition of the term. Dotty Carman said that she would find a definition in the Code and e-mail it to Margaret.

Marvin Krause of North Avondale proposed a definition for a public nuisance: “Any circumstance causing the general public trouble, annoyance, inconvenience, irritation or substantially interferes with the comparable enjoyment of life, health, property or safety or any quality of life in any circumstance, action or thing.” Mr. Mooney and Mr. Tarbell raised concerns that under that definition anything could be classified as a public nuisance. Mr. Mooney explained that even with this definition the Code does not prohibit public nuisances. And that there would still need a separate prohibition of public nuisances in another section of the Municipal Code. Ms. Lemmie suggested that perhaps specific decibel levels would help to define “public nuisance”.

Mr. Uebelacker raised concerns about outdoor eating and drinking areas and bars in residential neighborhoods that are disruptive with their outdoor sound system. Ms. Lemmie explained that the situation that Mr. Uebelacker’s presented was a Noise Violation enforceable by the Police. She suggested including measurable limitations (e.g. decibels, air quality, etc.) in the definition for Public Nuisance so that it would not be subject to interpretation. She feared that the Commission was getting too far off the topic of land uses with this discussion.

Mr. Mooney tabled this discussion for Dotty Carman to come back with a definition of “public nuisance”.

#### **§1435-35 Relationship to Variances, Special Exceptions and Conditional Uses – Correction**

Ms. Wuerstle proposed eliminating the words, “relating to coverage, setback requirements, parking building heights, fences or landscaping” because the Historic Conservation Board has authority to grant relief from these requirements of the Zoning Code as defined in Section 1445 of the Zoning Code. The additional descriptive language in Section 1435-35 is not necessary and has caused confusion as to the extent of the Historic Conservation Boards authority to grant relief.

Dotty Carman pointed out that she had no problem with this proposed change.

**Motion:** Ms. Lemmie moved approval.  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

#### **§ 1427-39 Sign Standards for the M, RF-R, RF-C and RF-M Districts – Modification**

Ms. Wuerstle proposed to correct a typographical error. The RF-R district had been left out of this Section and should be added.

**Motion:** Ms. Lemmie moved approval.  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

#### **§ 1441-11 Certificates of Occupancy and Use – Correction**

Ms. Wuerstle proposed to simplify the language in the amendment.

Mr. Krause proposed adding the word “new” to the required certificate of occupancy to reinforce that the certificate must be current.

**Motion:** Ms. Lemmie moved approval with the addition of the word “new” to the language in Section 1441-11 (a) (2) to read: “a change or conversion of use may not be made in any land, building or part thereof without a new Certificate of Occupancy and use issued by the Director.”  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carried.

Mr. Krause also wanted the amendment to require a public hearing when discussing a change of use because, in some cases, the Zoning Commissioner determines that there is no change of use.

Mr. Lyons explained that there are a thousand cases a year that involve changes in use. Mr. Mooney pointed out that it would be impossible to have a public hearing for each of them.

Ms. Lemmie stated that she was not prepared to discuss substantive changes today.

Meeting was adjourned at 10:15 A.M.

#### **ADJOURNMENT**

With no further business to consider, the meeting was adjourned.

**Motion:** Ms. Lemmie moved to adjourn  
**Second:** Ms. Hankner  
**Vote:** All ayes (4-0), motion carries.

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Margaret A. Wuerstle, AICP  
Chief Planner  
Community Development & Planning

Date: \_\_\_\_\_

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Donald Mooney, Chair  
City Planning Commission

Date: \_\_\_\_\_